



Agenda

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BOARD OF ADJUSTMENT

Tuesday, April 2, 2013

Special Time 12:00 P.M. This Date Only

200 Lincoln Ave. Santa Fe NM

Special Location City Councilors' Conference Room This Date Only

- A. ROLL CALL
- B. PLEDGE OF ALLEGIANCE
- C. APPROVAL OF AGENDA
- D. APPROVAL OF MINUTES: March 5, 2013 minutes
- E. FINDINGS/CONCLUSIONS:
 - 1. Case #2012-140. 3233 Paseo Del Monte Variance
 - 2. Case #2013-09. 1541 S. St. Francis Suite D Special Use Permit.
- F. OLD BUSINESS
- G. NEW BUSINESS
- H. STAFF COMMUNICATIONS
- I. MATTERS FROM THE COMMISSION
- J. ADJOURNMENT

NOTES:

New Mexico law requires the following administrative procedures be followed by zoning boards conducting "quasi-judicial" hearings. In "quasi-judicial" hearing before zoning boards, all witnesses must be sworn in, under oath, prior to testimony and will be subject to cross-examination. Witnesses have the right to have an attorney present at the hearing. The zoning board will, in its discretion, grant or deny requests to postpone hearings. Persons with disabilities in need of accommodations, contact the City Clerk's office at 955-6520, five (5) working days prior to meeting date.

**SUMMARY INDEX
OF THE BOARD OF ADJUSTMENT MEETING
Tuesday, April 2, 2013**

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OLD BUSINESS	None	3
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**MINUTES OF THE MEETING OF THE
BOARD OF ADJUSTMENT
CITY COUNCILORS CONFERENCE ROOM
SANTA FE, NEW MEXICO
Tuesday, April 2, 2013**

A. CALL TO ORDER AND ROLL CALL

A regular meeting of the City of Santa Fe Board of Adjustment was called to order by Gary Friedman, Chair, at approximately 6:00 p.m., on Tuesday, April 2, 2013, in the City Councilors Conference Room, City Hall, Santa Fe, New Mexico.

Gary Friedman, Chair
Rachel L. Winston, Vice-Chair
Coleen Dearing
Patricia Hawkins
Douglas Maahs
Daniel H. Werwath
[Vacancy]

OTHERS PRESENT:

Kelley Brennan, Assistant City Attorney
Tamara Baer, Planning Manager, Current Planning Division
Melessia Helberg, Stenographer

There was a quorum of the membership in attendance for conducting official business.

B. PLEDGE OF ALLEGIANCE

C. APPROVAL OF AGENDA

Chair Friedman would like to amend the agenda to skip the Pledge of Allegiance for today only, because there is no flag in the room.

MOTION: Daniel Werwath moved, seconded by Patricia Hawkins, to approve the Agenda as Amended.

VOTE: The motion was approved on a voice vote, with Coleen Dearing, Patricia Hawkins, Douglas Maahs and Daniel Werwath voting in favor of the motion, no one voting against and Rachel Winston absent for the vote.

D. APPROVAL OF MINUTES – March 5, 2013

MOTION: Patricia Hawkins moved, seconded by Daniel Werwath, to approve the minutes of the meeting of March 5, 2013, as presented.

VOTE: The motion was approved on a voice vote, with Patricia Hawkins, Douglas Maahs and Daniel Werwath voting in favor of the motion, none voting against, Colleen Dearing abstaining and Rachel Winston absent for the vote.

Rachel Winston arrived at the meeting

E. FINDINGS/CONCLUSIONS

A copy of the Findings of Fact and Conclusions of Law, in Case #2012-140, 3233 Paseo del Monte, variance, is incorporated herewith to these minutes as Exhibit "1."

A copy of the Findings of Fact and Conclusions of Law, in Case #2013-09, 1541 S. St. Francis, Suite D, Special Use Permit, is incorporated herewith to these minutes as Exhibit "2."

1. CASE #2012-140. 3233 PASEO DEL MONTE. VARIANCE.

MOTION: Douglas Maahs moved, seconded by Daniel Werwath, to approve the Findings of Fact and Conclusions of Law, in Case #2012-140, 3233 Paseo del Monte, variance, as presented by staff.

VOTE: The motion was approved unanimously on a voice vote.

1. CASE #2013-09. 1541 S. ST. FRANCIS, SUITE D. SPECIAL USE PERMIT.

MOTION: Daniel Werwath moved, seconded by Douglas Maahs, to approve the Findings of Fact and Conclusions of Law in Case #2013-09, 1541 S. St. Francis, Suite D, Special Use Permit, as presented by staff.

VOTE: The motion was approved unanimously on a voice vote.

F. OLD BUSINESS

There was no Old Business

G. NEW BUSINESS

There was no New Business.

H. STAFF COMMUNICATIONS

Ms. Baer said it seems as if there are no cases for May. She said since we have no other business, there won't be a Board of Adjustment meeting in May, and the Board will reconvene in June. Ms. Baer said this will be confirmed via email to everyone.

I. MATTERS FROM THE COMMISSION

Ms. Hawkins asked what would be the date of the June meeting.

Chair Friedman said it will be the first Tuesday in June.

J. ADJOURNMENT

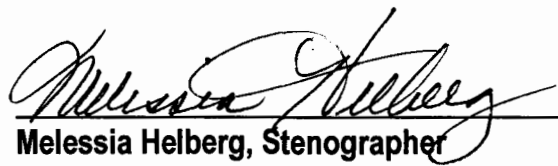
There was no further business to come before the Board.

MOTION: Douglas Maahs moved, seconded by Commissioner Hawkins, to adjourn the meeting.

VOTE: The motion was approved unanimously on a voice vote, and the meeting was adjourned at approximately 12:45 p.m.



Gary Friedman, Chair


Melessia Helberg, Stenographer

City of Santa Fe
Board of Adjustment
Findings of Fact and Conclusions of Law

Case #2012-140

3233 Paseo del Monte Fence Height Variance

Owner/Applicant's Name – Ramon Jose Lopez

THIS MATTER came before the Board of Adjustment (Board) for hearing on March 5, 2013 upon the application (Application) of Ramon Jose Lopez (Applicant).

The Applicant seeks a variance from the maximum fence height requirements of Santa Fe City Code (SFCC) §14-8.5(B)(2)(a) (the Variance) in order to erect an 8-foot-high fence (Project) on his property at 3233 Paseo del Monte (Property) where the maximum allowable fence height is 6 feet. The Property is zoned R-1 (Residential – 1 dwelling unit/acre).

After conducting a public hearing (Hearing) and having heard from staff and all interested persons, the Board hereby FINDS, as follows:

FINDINGS OF FACT

1. The Board heard a report from staff and received testimony and evidence from the Applicant; no members of the public were in attendance.
2. SFCC §14-2.4(C)(3) authorizes the Board to grant in specific cases a variance from the terms of Chapter 14 that is not contrary to the public interest and where, owing to special conditions, a literal enforcement of the provisions of Chapter 14 would result in unnecessary hardship.
3. Pursuant to SFCC §14-3.1(F)(2)(a)(vii) an Early Neighborhood Notification (ENN) meeting is not required for variances requesting construction or modification of individual single-family dwellings and appurtenant accessory structures.
4. The Project constitutes construction of an appurtenant accessory structure to the single-family dwelling located on the Property and an ENN is thus not required.
5. SFCC §14-3.16(B) authorizes the Board to approve, approve with conditions or deny the Variance based on the Application, input received at the public hearing and the approval criteria set forth in SFCC §14-3.16(C).
6. City Land Use Department staff reviewed the Application and related materials and information submitted by the Applicant for conformity with applicable SFCC requirements and provided the Board with a written report of its findings (Staff Report) together with a recommendation that the Board approve the Variance.
8. The information contained in the Staff Report and the testimony and evidence presented at the hearing is sufficient to establish with respect to the Applicant's request for the Variance that (a) unusual physical characteristics exist that distinguish the Property from others in the vicinity that are subject to the same sign regulations, in that the Property is located adjacent to the National Forest and includes established wildlife trails which have experienced increased use due to the drought and to prescribed burns in the area, leading to the

Exhibit "1"

destruction of vegetation on the Property and introducing more predatory animals, potentially endangering the residents; (b) the foregoing existing conditions constitute special circumstances that make it infeasible to develop the property in accordance with SFCC requirements, in that a 6-foot fence will not deter deer and elk, which attract predatory animals onto the Property, where an 8-foot fence will; (c) the Variance will not affect the intensity of development on the Property; (d) the Variance is the minimum variance necessary to prevent deer and elk from entering and attracting predatory animals onto the Property; (e) the Variance is not contrary to the public interest, in that the Property is zoned for residential use and the Variance will not alter or intensify that use; and (f) a literal enforcement of SFCC §§14-8.5(B)(2)(a) would result in unnecessary hardship in that it would permit the continued destruction of vegetation on the Property and endanger the residents.

CONCLUSIONS OF LAW

Under the circumstances and given the evidence and testimony submitted during the Hearing, the Board CONCLUDES as follows:

1. The Board has the power and authority under SFCC §14-2.4(C)(3) to authorize the Variance.
2. The Application for the Variance meets the criteria set forth in SFCC §14-3.16(C).

WHEREFORE, IT IS ORDERED ON THE _____ OF APRIL 2013 BY THE BOARD OF ADJUSTMENT OF THE CITY OF SANTA FE:

1. That the Variance is approved.
2. The Variance shall expire if it is not exercised within three (3) years of the date these Findings of Fact and Conclusions of Law are adopted by vote of the Board, subject to any right of the Applicant under applicable SFCC to request an extension of such time.

Gary Friedman
Chair

Date:

FILED WITH THE CITY CLERK:

Yolanda Y. Vigil
City Clerk

Date:

APPROVED AS TO FORM:

Kelley Brennan
Assistant City Attorney

Date:

City of Santa Fe
Board of Adjustment
Findings of Fact and Conclusions of Law

Case #2013-09 – 1541 South St. Francis Drive Suite D Special Use Permit
Owner/Applicant – Sue McKelvey, DVM

THIS MATTER came before the Board of Adjustment (Board) for hearing on March 5, 2013 (Hearing) upon the application (Application) of Mark Hogan (Applicant).

The Applicant seeks a special use permit for a veterinary use at 1541 St. Francis Drive Unit D (Property). The Property is zoned C-1 (Office and Related Commercial).

After conducting a public hearing and having heard from staff and all interested persons, the Board hereby FINDS, as follows:

FINDINGS OF FACT

1. The Board heard a report from staff and received testimony and evidence from the Applicant; no members of the public were in attendance..
2. Pursuant to Code §14-2.4(C)(2) the Board has the authority to hear and decide applications for special use permits as provided in Santa Fe City Code (Code).
3. Pursuant to Code §14-3.6(B) the Board has the authority to hear and decide applications for special use permits in accordance with applicable provisions of Code Chapter 14; to decide questions that are involved in determining whether special use permits should be granted; and to grant special use permits with such conditions and safeguards as appropriate under Code Chapter 14; or to deny special use permits when not in harmony with the intent and purpose of Code Chapter 14.
4. Pursuant to Code §14-6.1(C) Table 14-6.1-1, entitled "Table of Permitted Uses", veterinary establishments and pet grooming are permitted uses in C-1 districts, but require a special use permit if located within 200 feet, excluding rights-of-way, of residentially-zoned property.
5. The Property is located in a C-1 district within 200 feet of an R-3 (Residential -3 dwelling units/acre) district.
6. Code Section 14-3.6(C) sets out the procedures to be followed prior to the grant by the Board of a special use permit, including:
 - (a) Approval of a site plan and other site development drawings necessary to demonstrate that the Project can be accomplished in conformance with applicable Code standards [Section 14-3.6(C)(1)];
 - (b) Submittal of an application indicating the Code section under which the special use permit is sought and stating the grounds on which it is requested [Section 14-3.6(C)(2)]; and
 - (c) That a special use permit is limited to the specific use and intensity granted, requiring a new or amended special use permit if the use is changed or intensified [Section 14-3.6(C)(3)].

Exhibit "2"

7. Code Section 14-3.6(D)(1) sets out certain findings that the Board must make to grant a special use permit, including:
 - (a) That the Board has the authority to grant a special use permit for the Project [Section 14-3.6(D)(1)(a)];
 - (b) That granting a special use permit for the Project does not adversely affect the public interest [Section 14-3.6(D)(1)(a)]; and
 - (c) That the Project is compatible with and adaptable to adjacent properties and other properties in the vicinity of the Project [Section 14-3.6(D)(1)(c)].
8. Code Section 14-3.6(D)(2) authorizes the Board to specify conditions of approval for a special use permit to accomplish the proper development of the area and to implement the policies of the general plan.
9. Code Section 14-3.1(F)(2)(a)(viii) requires an ENN for special use permits and Code Section 14-3.1(F)(4)-(6) establishes procedures for the ENN, including:
 - (a) Compliance with the notice requirements of Code Section 14-3.1(H) [Section 14-3.1(F)(4)];
 - (b) Timing for the ENN meeting and the principles underlying its conduct [Section 14-3.1(F)(5)]; and
 - (c) Guidelines for the conduct of the ENN meeting [Section 14-3.1(F)(6)].
10. Notice was properly given in accordance with the notice requirements of Code Section 14-3.1(H)(1)(a)-(d).
11. An ENN meeting was held at 6:00 p.m. on January 29, 2013 at the Oliver LaFarge Branch Library at 1730 Llano Street.
12. The ENN meeting was attended by the Applicant, City staff, and other interested parties, and the discussion followed the guidelines set out in Code Section 14-3.1(F)(6).
13. The Applicant submitted a site plan and an application indicating the Code section under which the special use permit was being sought and stating the grounds for the request.
14. Board staff provided the Board with a report dated February 13, 2013 for the March 5, 2013 Board Meeting (Staff Report) evaluating the factors relevant to the proposed special use permit and recommending approval by the Board of such special use permit.
15. Granting the special use permit for the Project will not adversely affect the public interest in that the veterinary use will be contained within the existing building on the Property and will not include any outdoor storage of animals; existing parking and ingress and egress is sufficient to serve the use; and the Property is separated from the adjacent R-3 district by an 8-foot wall and includes extensive landscaping.
16. The veterinary use is compatible with and adaptable to adjacent properties and to other properties in the vicinity for the reasons set forth in paragraph 15 above and will not result in any material changes to the Property.

CONCLUSIONS OF LAW

Under the circumstances and given the evidence and testimony submitted during the Hearing, the Commission CONCLUDES as follows:

1. The Board has the power and authority under Code §§14-2.4(C)(2) and 14-3.6(B) and Code §14-6.1(C) Table 14-6.1-1 to grant the special use permit applied for.

2. The special use permit was properly and sufficiently noticed via mail, publication, and posting of signs in accordance with Code requirements.
3. The ENN meeting complied with the requirements established under the Code.
4. The granting of the special use permit will not adversely affect the public interest.
5. The Project is compatible with and adaptable to adjacent properties and to other properties in the vicinity of the Project.
6. The special use permit granted herewith is granted for the specific use of the Property and intensity applied for and no change of use or more intense use shall be allowed unless approved by the Board under a new or amended special use permit or as otherwise permitted by applicable Code.

WHEREFORE, IT IS ORDERED ON THE _____ OF APRIL 2013 BY THE BOARD OF ADJUSTMENT OF THE CITY OF SANTA FE:

1. That the special use permit for a veterinary use is approved, subject to the condition that no part of the use will include the outdoor storage of animals.
2. The special use permit granted herewith shall expire if (a) it is not exercised within three (3) years of the date these Findings of Fact and Conclusions of Law are adopted by vote of the Board, subject to any right of the Applicant under applicable Code to request an extension of such time or (b) it ceases for any reason for a period of one hundred eighty (180) days.

Gary Friedman
Chair

Date:

FILED WITH THE CITY CLERK:

Yolanda Y. Vigil
City Clerk

Date:

APPROVED AS TO FORM:

Kelley Brennan
Assistant City Attorney

Date: